LIBRARY
SUPREME COURT, U. S.

FILED
SEP 27 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973.

No. 73-388.

HELEN M. JENNINGS,
Petitioner,

v.

BOENNING & COMPANY and
BOENNING & SCATTERGOOD, INC.,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

L. Carter Anderson,
Counsel for Respondents.

Of Counsel:
Rawle & Henderson,
2100 Packard Building,
Philadelphia, Pa. 19102

International Printing Co., 711 So. 50th St., Phila., Pa. 19143 — Tel. (215) 727-8711

INDEX.

	Page
QUESTION PRESENTED	1
STATEMENT OF THE CASE	2
REASONS FOR DENYING THE WRIT	4
CONCLUSION	5

TABLE OF CASES CITED.

	Page
Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers, 398 U. S. 281 (1970)	4
Cousins v. Wigoda, 463 F. 2d 603 (7th Cir. 1972), 409 U. S. 1201 (1972)	5
Kline v. Burke Construction Company, 260 U. S. 226 (1922)	4
Lynch v. Snepp, 472 F. 2d 769 (4th Cir. 1973)	5
Mitchum v. Foster, 407 U. S. 225 (1972)	4, 5
Vernitron Corporation v. Benjamin, 440 F. 2d 105 (2d Cir. 1971)	4

STATUTES.

	Page
Federal Anti-Injunction Act, 28 U. S. C. Section 2283	4
Federal Reserve Board, Regulation T, 12 C. F. R. Section 220.4(c)(2)	2
Securities Exchange Act of 1934, Section 21(e); 15 U. S. C. 78u(e)	4

QUESTION PRESENTED.

Did the Court of Appeals err in holding that the District Court exceeded its authority in enjoining proceedings in a State Court, where the decision of the Court of Appeals was consistent with decisions of this Court and other Federal Courts, and there appears no necessity to review the established legal doctrine.

STATEMENT OF THE CASE.

Respondents here adopt for purposes of the instant Petition, the statement of facts and circumstances set forth in the opinion of the Court of Appeals for the Third Circuit, which is printed in Petitioner's Appendix. In addition, Respondents add the following facts in clarification of Petitioner's statement.

Petitioner states as a fact that Respondents violated Regulation T of the Federal Reserve Board, 12 C. F. R. Section 220.4(c)(2). This is an allegation at issue in the case, which is unresolved, as post trial motions are still pending in the District Court. Respondents have denied any violation of Regulation T, and have further denied that Petitioner (or her husband John Jennings, who was a plaintiff in the District Court at the time of entry of the injunction which is the subject of this Petition) has a valid cause of action against the Respondents. These questions are not now before this Court, but it is important to clarify the implication in Petitioner's statement that the questions have been finally decided.

Petitioner also states as a fact that the state court could not consider alleged violations of the Securities Exchange Act, and upon this statement Petitioner bases an argument that the state court had only "partial jurisdiction" over the dispute before it. On the contrary, the case in the state court was a judgment on a promissory note and a Petition to open that judgment, which Petition contained allegations of violation of the Securities Exchange Act. As explained by the opinion of the Court of Appeals, the exclusive federal jurisdiction over claims under the Securities Exchange Act does not preclude state courts from considering *defenses* based upon that statute. *Appendix,* pp. 21-22. In accordance with the decisions of this Court and the

Courts of Appeals, cited in the Appendix, the state court had power to rule on all of the issues before it. Although Petitioner has argued that the state court lacked such power with respect to the Federal law defense (which defense she herself had asserted) this unsupported argument should not be represented as a fact.*

* The question of whether the doctrines of estoppel and res judicata bar Petitioner's suit, is still pending and undecided by the District Court.

REASONS FOR DENYING THE WRIT.

There is neither uncertainty nor conflict among the decisions of the Courts of Appeal and of this Court, defining and distinguishing the scope of power of the federal and state judicial systems. Petitioner has stated that the position adopted in the instant case by the District Court, which was reversed by the Court of Appeals, is most consistent with the recent opinions of this Court. Petitioner cites no such recent opinions, and on the contrary, the recent decisions of this Court and other Federal courts are entirely consistent with the opinion of the Court of Appeals which is printed in the Appendix.

That Section 21(e) of the Securities Exchange Act does not constitute an exception to the Federal Anti-Injunction Act, 28 U. S. C. Section 2283, was expressly held by the Second Circuit in *Vernitron Corporation v. Benjamin*, 440 F. 2d 105 (2d Cir. 1971). This Court in *Mitchum v. Foster*, 407 U. S. 225 (1972) thoroughly analyzed the problem of statutory exceptions to the Anti-Injunction Act, and the Court of Appeals followed and applied that analysis and the *Vernitron* opinion in deciding the instant case.

That the injunction was not "necessary in aid of" the District Court's jurisdiction, within the meaning of the Anti-Injunction Act, is clear from the various decisions of this Court cited in the opinion of the Court of Appeals: *Atlantic Coast Line Railroad v. Brotherhood of Locomotive Engineers*, 398 U. S. 281 (1970); *Kline v. Burke Construction Company*, 260 U. S. 226 (1922). The factor which apparently led Petitioner and the District Court to the contrary conclusion, was the erroneous assumption that the state court lacked jurisdiction to consider all of the federal law questions before it; this misunderstanding was explained by the Court of Appeals in its opinion. *Appendix*, pp. 21-22.

Finally, this Court has emphatically cautioned the District Courts to exercise extreme restraint in interfering with proceedings in state courts; only the most clear and emergent circumstances will justify such action, and this restraint arises not out of statute but from ". . . principles of equity, comity, and federalism that must restrain a Federal Court when asked to enjoin a state court proceeding." *Mitchum v. Foster, supra,* at 243. *Cousins v. Wigoda,* 463 F. 2d 603 (7th Cir. 1972), 409 U. S. 1201 (1972) (Rehnquist, J., in chambers); *Lynch v. Snepp,* 472 F. 2d 769 (4th Cir. 1973). The Court of Appeals found it unnecessary to reach this question, or the questions of res judicata, estoppel, and the procedural impropriety of the Petitioner's collateral attack upon a state court judgment. However those matters were duly raised, and remain as obstacles to Petitioner's injunction even if this Court were to hold that the Anti-Injunction Act is inapplicable.

CONCLUSION.

Petitioner's request for a Writ of Certiorari should be denied because the ruling of the Court of Appeals in this case is plainly consistent with the decisions of this Court and other federal courts, and there appears no cause to disturb the settled legal doctrine which has been duly applied.

Respectfully submitted,

L. CARTER ANDERSON,
Counsel for Respondents.

Of Counsel:
RAWLE & HENDERSON.